

## Board of Cosmetologist Examiners

### July 16, 2012 Board Meeting

10:30am, Conference Room A, University Park Plaza  
2829 University Ave SE, Minneapolis, MN 55414

#### Present at Meeting:

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Kurt Deile, Chair

Mary Finnegan, Member

Robert Salmonson, Member

Laurie Boggess, Member

Gina Stauss Fast, Executive Director

Michele Owen, Attorney

Billi Jo Rygg, Licensing Division Manager

Rebecca Gaspard, Compliance Division Manager

Maggie Shea, Assistant to the Executive Director

#### I. *Call to Order*

KD called the meeting to order at 10:37 am.

#### II. *Approval of Proposed Agenda*

LB made a motion to pass the proposed agenda with flexibility.

BS seconded. 4 Ayes. 0 Nays. **Motion Carried.**

#### III. *Approval of Minutes*

BS made a motion to approve the minutes from May 14, 2012 as written.

MF seconded. 4 Ayes. 0 Nays. **Motion Carried.**

#### IV. *Old Business*

##### A. Esthetician Task Force

GSF presented actions that can be taken by the Board based on recommendations from the Task Force:

Goal 1 (*Define 120 Preclinical Hours*): Changing "Pre-Clinical" to "Theory" will require a Rule Change; the Board can vote today to interpret "elementary service skills" to ensure students do not perform services on clients; Removing restrictions on individuals with communicable diseases will require a statute change.

Goal 2 (*Define Applied Science and Skill*): Quotas would require a Rule Change; Testing out on waxing can be added without action because the requirements come from an internal document.

Goal 3 (*Identify Missing Items from Goal 2*): Adding "trunk of the body" will require a statute change.

Goal 4 (*Procedures – Basic, Advanced, Totally Out of Scope*): For discussion, a 2-tier license would need to be voted on by the legislature.

Goal 5 (*Definitions and Supervision*): Reconvene Task Force to focus on “in connection with medical care”

Goal 6 (*Consumer Protection and Awareness*): BCE staff is in the final stages of drafting a document to be posted to the website.

Goal 7 (*Potential Definition for a 2-Tier License*): This is also an issue the Task Force can be reconvened to look at.

MF made a motion to create a Task Force to look further into Goal 5 and Goal 7, and to have the members ready for appointment by the October 1, 2012 meeting.

LB Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

MF made a motion to interpret “elementary service skills” in Rules 2110.0510, 2110.0520 and 2110.0530 as “Observation of an instructor demonstration or student to student application of basic services related to the practice of the skin.”

LB seconded. 4 Ayes. 0 Nays. **Motion Carried.**

GSF will post a position statement on the website and send a letter to all schools.

MF made a motion to give the Executive Director direction to move forward on suggested Rule and Legislative changes as discussed in the Task Force document and organize them for the October meeting.

LB Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

#### B. Park Avenue School Variance

GSF Park Avenue’s variance request was tabled from the May 14, 2012 meeting to today’s meeting. The original request was for a variance to the rule that requires sinks in all rooms, and the request still stands.

KW As requested, I looked into adding portable sinks into the esthetician rooms, but any kind of portable sink is not allowed. Cathy Tran (MN Department of Labor and Industry) said they do not meet Minnesota standards—holding tanks are not allowed. Plumbing fixtures must be plumbed. I am open to suggestion for a possible solution, and I feel I have exhausted all of my resources and don’t believe I can go much higher. We are currently doing facials in the lobby.

BS Why can the Barber Stop use portable sinks but Cathy Tran says they can’t?

MO The Department of Labor and Industry has jurisdiction over plumbing in the State—we don’t know who approved the other sinks.

KD Can we have Ms. Tran come in to talk about sinks?

GSF Yes.

LB Could we grant a variance until the lease is up?

MF Do you have an investment in the building?

KW Yes, in the dispensary we added. I would need to close for a week to add plumbing.  
The lease ends March 1, 2013.

BS made a motion to grant a variance to Rules 2110.0390, subpart 5 and 2105.0360, subpart 6 based on the Board's findings that the application of the rule would cause a hardship to the school by requiring additional plumbing; variance from the Rule would be consistent with the public interest because there are sinks nearby; and variance from the rule will not prejudice anyone because it is the only school in the area. The school must remove the doors and include a temporary closure. The variance will expire March 1, 2013.

MF Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

KD made a motion for BCE staff to contact Cathy Tran at the Department of Labor and Industry for clarification on portable sinks.

LB Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

KD Recessed the meeting at 12:10pm.

KD Reconvened the meeting at 12:22 pm.

V. *New Business*

H. Public Comment – Institute for Justice

Anthony Sanders and Lee McGrath (IFJ) represent Shailah and Tanveer Naseeruddin of *Brow Studio 7*. The IFJ presented information to the Board about threading and asked two questions: Does Minnesota law currently require threaders to obtain a cosmetology license? Would the Board support legislation that exempts threaders from all of MN cosmetology requirements?

MF A law passed exempting hair braiders from regulation, and there are problems with sanitation, but we do not have jurisdiction. We do regulate temporary hair removal—you need to remove the hair bulb which exposes the body fluid which is where cross-contamination comes in.

KD Do you use sanitation?

SN We use hand sanitizer.

KD What about on the thread?

SN No, we use a new thread for each client.

BJR Is the thread moistened?

SN No.

LB Do you hold it in your mouth?

SN Yes, one end is held in the mouth.

LM The part of the string that is held in the mouth is for tension purposes and does not come in contact with the skin.

AS Part of the Texas lawsuit is that there is no documented case of passing a disease through threading. The 600 hours of training does not include threading and for a threader to do that doesn't make sense.

SN Threading is one of the most widely used forms of hair removal today because it's safe and natural. I would love to have a certificate that says I'm licensed—but schools don't teach it.

KD I think if we had a license there would be a lot of schools offering it.

LM Mr. Chair, you don't want to go down that route because there is no health and safety rationale for licensing this practice—the Wisconsin and Arizona legislatures have recognized that.

KD Your client was asking about a certificate and I was commenting on that.

GSF Is there any kind of registration in other states like we have for hair braiders?

LM In Wisconsin and Arizona it is a complete exemption.

MO Right now, the definition of cosmetology is very broad. The definition of esthetics says that permanent depilation is excluded. By implication, temporary depilation is most likely included. It is a grey area. The Board could rule that all forms of temporary hair removal require a cosmetology or esthetician license. The Board has not taken a position on threaders—there have been no enforcement actions in the past. However, in 214.001 and 214.002 you need to have support that there was a rational basis to justify this kind of economic regulation to say that someone practicing eyebrow threading would have to take 600 hours of training—is that the least restrictive means?

MF Threading is just one form of temporary hair removal.

MO You need to look at the policy statute that talks about chemicals, apparatus and other appliances.

MF The thread is the apparatus.

MO Would it pass constitutional muster to say that every eyebrow threader would have to take 600 hours of training before they could practice in Minnesota?

KD I suggest we table this issue so we can get more legal information from MO and IFJ. If we want to regulate it, and a lawsuit is brought, what are the ramifications?

BS made a motion to table the Public Comment to the October 1, 2012 meeting.

MF Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

#### C. Waiver – Jane M. Hager (present)

JH Ms. Hager is requesting a waiver to Rule 2105.0160 that requires 2,700 hours of licensed practice within three years prior to application for a manager's license. Her license expired in 1998 and she was originally licensed as a manager in 1975. She has been offered a job at a health care facility that recently expanded its salon. The job will help her pay back her student loans and support her college-age children.

MF Why can't she work under the current salon manager and get her hours that way?

JH She only works three days a week.

KD Made a motion to grant the waiver request upon passing the manager's exam within three months based on hardship

BS Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

F. Waiver – Kailey Richter-Moore (present)

GSF Ms. Richter-Moore is licensed in Illinois and is requesting a waiver to accept her transcripts that show 1550 hours of training, whereas the verification from the State of Illinois is for 1500 hours.

MF Made a motion to accept the transcripts along with the letter of verification from Illinois.

LB Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

D. Waiver – Abigail Hilgendorf (not present)

GSF Ms. Hilgendorf is requesting a waiver to Rule 2105.0150 that requires professional training be within three years prior to application for a license. She was unable to take her exams because of debt and because she was living out of state. She would be willing to take a refresher course in order to gain her license.

MF made a motion to grant a waiver to the three year requirement upon receipt of application, 155 hour refresher course, and passing the three exams within one year.

LB Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

E. Waiver – Lonna Marjama (not present)

GSF Ms. Marjama's license expired at the end of July in 2011, and she is requesting a waiver to the 40 hour refresher course based on medical need.

BS The medical documentation was too brief, vague.

LB I agree

MF She needs more documentation.

LB Made a motion to deny the waiver request due to lack of documentation.

MF Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

G. Waiver – Regina Sorensen (not present)

GSF Ms. Sorensen is licensed in Wisconsin and is requesting a waiver to accept her transcripts that show 600 hours of training, whereas the verification from Wisconsin is for 450 hours.

BS Made a motion to accept the transcripts along with the letter of verification from the State of Wisconsin.

LB Seconded. 4 Ayes. 0 Nays. **Motion Carried.**

I. In-House Request – Course Completion Certificate

BJR The Licensing staff has encountered an unusual situation with one school where students have failed sections of the practical exam, but the total points of the entire exam gave them a passing score of more than 75%. Normally when a student fails a section, the school has them retake that portion. This school thinks that it is the overall score that matters—not each of the sections. Should licensing staff accept an overall passing score even when the applicant has failed one of the sections?

MF They need to pass every section.

GSF We are going to redo this and add waxing to it.

J. In-House Request – Purifiles

GSF We received a letter from a spa because they were told by an inspector that they cannot reuse Purifiles because they are porous. However, on the packaging the company claims that they can be sanitized and reused because they are coated in aluminum oxide. The files themselves don't say non-porous, so the inspectors have no way of knowing unless it's still in the package.

BS I have to believe what the manufacturer tells us.

MF Soak them in Barbicide overnight—if they change color, then they are porous.

GSF We can table this to the next meeting to give the members a chance to look at the files.

VI. *Division Reports*

Administrative Division Report – GSF presented

Compliance and Inspection Division Report – RG presented

Licensing Division Report – BJR presented

VII. *2013 Board of Cosmetologist Examiners Meeting Schedule*

Meetings will be held at 9:00am in Conference A on the 4<sup>th</sup> floor of University Park Plaza, 2829 University Avenue SE, Minneapolis, MN 55414 on the following dates:

Monday, February 25, 2013

Monday, May 13, 2013

Monday, July 22, 2013

Monday, October 7, 2013

Monday, December 9, 2013

VIII. *Adjournment*

LB Made a motion to adjourn the meeting at 2:43pm

MF Seconded. 4 Ayes. 0 Nays. **Motion Carried.**